

**BEFORE THE
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID
DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**MICHELE KATHLEEN MORELAND, HA
2344 Butano Drive, Suite C-3
Sacramento, CA 95825**

Hearing Aid Dispenser License No. HA 7507

Respondent.

Case No. 1C-2012-40

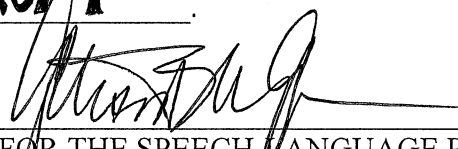
OAH No. 2016070865

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on June 30, 2017.

It is so ORDERED May 31, 2017.



FOR THE SPEECH-LANGUAGE PATHOLOGY
AND AUDIOLOGY AND HEARING AID
DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS

1 XAVIER BECERRA
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7 *Attorneys for Complainant*
8
9

10 **BEFORE THE**
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID
11 **DISPENSERS BOARD**
DEPARTMENT OF CONSUMER AFFAIRS
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 1C-2012-40

14 **MICHELE KATHLEEN MORELAND**
15 **2344 Butano Drive, Suite C-3**
Sacramento, CA 95825

OAH No. 2016070865

16 **Hearing Aid Dispenser License No. HA 7507**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17 Respondent.
18
19
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21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 PARTIES

24 1. Paul Sanchez (Complainant) is the Executive Officer of the Speech-Language
25 Pathology and Audiology and Hearing Aid Dispensers Board (Board). He brought this action
26 solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney
27 General of the State of California, by Megan R. O'Carroll, Deputy Attorney General.
28

2. Respondent Michele Kathleen Moreland, (Respondent) is represented in this proceeding by attorney Glenn W. Peterson, whose address is: 2267 Lava Ridge Court, Suite 210 Roseville, CA 95661.

3. On or about May 12, 2009, the Board issued Hearing Aid Dispenser License No. HA 7507 to Michele Kathleen Moreland, (Respondent). The Hearing Aid Dispenser License was in full force and effect at all times relevant to the charges brought in Accusation No. 1C-2012-40, and will expire on May 31, 2017, unless renewed.

JURISDICTION

4. Accusation No. 1C-2012-40 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 4, 2015. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 1C-2012-40 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1C-2012-40. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 1C-2012-40.

4 10. Respondent agrees that her Hearing Aid Dispenser License is subject to discipline and
5 she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
6 below.

7 CONTINGENCY

8 11. This stipulation shall be subject to approval by the Speech-Language Pathology and
9 Audiology and Hearing Aid Dispensers Board. Respondent understands and agrees that counsel
10 for Complainant and the staff of the Speech-Language Pathology and Audiology and Hearing Aid
11 Dispensers Board may communicate directly with the Board regarding this stipulation and
12 settlement, without notice to or participation by Respondent or her counsel. By signing the
13 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
14 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
15 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
16 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
17 action between the parties, and the Board shall not be disqualified from further action by having
18 considered this matter.

19 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
20 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
21 signatures thereto, shall have the same force and effect as the originals.

22 13. In consideration of the foregoing admissions and stipulations, the parties agree that
23 the Board may, without further notice or formal proceeding, issue and enter the following
24 Disciplinary Order:
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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Hearing Aid Dispenser License No. HA 7507 issued to Respondent Michele Kathleen Moreland is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. MONITORING

Within thirty (30) days of the effective date of this decision, Respondent shall submit to the Board for its prior approval a plan of practice in which Respondent's practice shall be monitored by another hearing aid dispenser, who shall provide periodic reports to the Board. If the monitor resigns or is no longer available, Respondent shall, within 15 days, move to have a new monitor appointed, through nomination by Respondent and approval by the Board.

Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval, the name and qualifications of an individual who has agreed to serve as a practice and billing monitor.

The practice and billing monitor shall (1) hold a current and valid California license in the same field of practice as Respondent, (2) have held the license for a minimum of three (3) years; (3) have had no disciplinary action taken against his/her license by the Board; and (4) be independent, with no prior or current business, professional, personal, or other relationship that could reasonably be expected to compromise the ability of the monitor to provide impartial and unbiased supervision of the Respondent. An administrative citation and fine does not constitute discipline and therefore, in and of itself, is not a reason to deny an individual as a monitor.

Once approved, the monitor(s) shall submit to the Board or its designee a plan for approval by which Respondent's practice shall be monitored. The Respondent shall provide the monitor with a copy of this Decision and Accusation or Statement of Issues. The monitoring shall be general and not require the physical presence of the monitor during the time services are performed, but does require an occasional, unrestricted review of the work performed as well as quarterly monitoring visits at the office or place of practice.

Additionally, the monitor shall have full and unrestricted access to patient and billing records of Respondent. The monitor may evaluate all aspects of Respondent's practice regardless

1 of Respondent's areas of deficiencies. Respondent shall obtain any necessary patient releases to
2 enable the monitor to review all client and fiscal records and to make direct contact with clients,
3 if necessary. Respondent shall execute a release authorizing the monitor to divulge any
4 information that the Board may request.

5 The approved monitor shall submit written reports to the Board on a quarterly basis, or
6 other frequency as determined by the Board, verifying that monitoring has taken place as required
7 and include an evaluation of Respondent's performance, compliance with his/her probationary
8 conditions, and existing laws governing the practice. It shall be the Respondent's responsibility to
9 assure that the required reports are filed in a timely manner.

10 If the monitor terminates his/her monitoring or is no longer available to serve in the monitor
11 role, Respondent must submit to the Board the name or names of a new monitor, including
12 qualifications and supervision plan within fifteen (15) days. If a new monitor is not approved by
13 the Board within thirty (30) days from the date of resignation of the previous monitor,
14 Respondent shall be suspended from practice until a new monitor has been approved by the Board
15 and the necessary documents are filed with the Board.

16 All costs of monitored practice shall be paid by the Respondent. Failure to pay costs will be
17 considered a violation of the probation order.

18 2. ETHICS COURSE

19 Within sixty (60) days of the effective date of this decision, Respondent shall enroll in a
20 course in ethics, at Respondent's expense, approved in advance by the Board. Respondent shall
21 submit a certification of successful completion to the Board not later than 15 calendar days after
22 successfully completing the course. Failure to successfully complete the course during the first
23 year of probation is a violation of probation.

24 3. SUPERVISION

25 Respondent shall not function as a supervisor during the period of probation for hearing aid
26 dispenser trainees.

27 4. OBEY ALL LAWS

28 Respondent shall obey all federal, state, and local laws, including all statutes and

1 regulations governing the practice of the licensee.

2 Further, Respondent shall, within five (5) days of any arrest, submit to the Board in writing
3 a full and detailed account of such arrest.

4 5. COMPLY WITH PROBATION PROGRAM

5 Respondent shall fully comply with the probation program established by the Board and
6 shall cooperate with the representatives of the Board.

7 6. CHANGE OF ADDRESS NOTIFICATION

8 Respondent shall, within five (5) days of a change of residence or mailing address, notify
9 the Board in writing of the new address.

10 7. OUT-OF-STATE RESIDENCY

11 Respondent shall notify the Board immediately in writing if he leaves California to reside
12 or practice in another state.

13 Respondent shall notify the Board immediately upon return to California.

14 The period of probation shall not run during the time Respondent is residing or practicing
15 outside California.

16 8. TOLLING FOR CESSATION OF PRACTICE WHILE MAINTAINING IN-STATE
17 RESIDENCE

18 The period of probation shall not run during the time Respondent has ceased to practice
19 while continuing to reside in California. If, during probation, the Respondent ceases to practice,
20 Respondent is required to immediately notify the Board in writing of the date practice ceased and
21 the date practice will be resumed.

22 9. SUBMIT QUARTERLY WRITTEN DECLARATIONS

23 Respondent shall submit to the Board quarterly written declarations and verification of
24 actions signed under penalty of perjury. These declarations shall certify and document
25 compliance with all the conditions of probation.

26 10. NOTIFY EMPLOYER OF PROBATION TERMS AND RESTRICTIONS

27 When currently employed or applying for employment as a hearing aid dispenser,
28 Respondent shall notify his employer of the probationary status of Respondent's license. This

1 notification to the Respondent's current health care employer shall occur no later than the
2 effective date of the Decision placing Respondent on probation. The Respondent shall notify any
3 prospective health care employer of his probationary status with the Board prior to accepting such
4 employment. This notification shall be by providing the employer or prospective employer with a
5 copy of the Board's Decision placing Respondent on probation.

6 Respondent shall cause each employer to submit quarterly written declarations to the
7 Board. These declarations shall include a performance evaluation.

8 Respondent shall notify the Board, in writing, of any change in his employment status,
9 within ten (10) days of such change.

10 11. INTERVIEWS WITH BOARD REPRESENTATIVES

11 Respondent shall appear in person for interviews with the Board, or its designee, upon
12 request at various intervals and with reasonable notice. An initial probation visit will be required
13 within sixty (60) days of the effective date of the Decision. The purpose of this initial interview
14 is to introduce Respondent to the Board's representatives and to familiarize Respondent with
15 specific probation conditions and requirements. Additional meetings may be scheduled as needed.

16 12. FUNCTION IN LICENSED CAPACITY

17 During probation, Respondent shall work in his capacity in the State of California. If
18 Respondent is unable to secure employment in his capacity, the period of probation shall be tolled
19 during that time.

20 13. MAINTAIN A VALID LICENSE

21 Respondent shall, at all times while on probation, maintain an active current license with
22 the Board, including any period during which suspension or probation is tolled.

23 Should Respondent's license, by operation of law or otherwise, expire, upon renewal or
24 reinstatement, Respondent's license shall be subject to any and all terms of this probation not
25 previously satisfied.

26 14. VIOLATION OF PROBATION

27 If Respondent violates probation in any respect, the Board may seek to revoke probation
28 and carry out the disciplinary order that was stayed. The Respondent shall receive prior notice

1 and the opportunity to be heard. If a Petition to Revoke Probation, an Accusation or Petition to
2 Vacate Stay or other formal disciplinary action is filed against Respondent during probation, the
3 Board shall have continuing jurisdiction and the period of probation shall be extended until the
4 matter is final.

5 15. COMPLETION OF PROBATION

6 Respondent's license will be fully restored upon successful completion of probation.

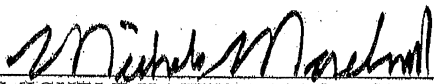
7 16. COST RECOVERY

8 Respondent shall reimburse the Board for the cost of the investigation and prosecution of
9 this case. That amount shall be \$6,448.00, and shall be paid in full directly to the Board within
10 thirty (30) days prior to the end of the probation period.

11 ACCEPTANCE

12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
13 discussed it with my attorney, Glenn W. Peterson. I understand the stipulation and the effect it
14 will have on my Hearing Aid Dispenser License. I enter into this Stipulated Settlement and
15 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
16 Decision and Order of the Speech-Language Pathology and Audiology and Hearing Aid
17 Dispensers Board.

18
19 DATED: 3/24/17


MICHELE KATHLEEN MORELAND
Respondent

21 I have read and fully discussed with Respondent Michele Kathleen Moreland, HA the terms
22 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
23 Order. I approve its form and content.

24 DATED: 3/24/17


GLENN W. PETERSON
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

Dated: *April 4, 2007*

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

Megan R. O'Carroll

MEGAN R. O'CARROLL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1C-2012-40

By *Ante Joseph*

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 MEGAN R. O'CARROLL
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6 Telephone: (916) 324-5288
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7 *Attorneys for Complainant*

8 **BEFORE THE**
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID
9 **DISPENSERS BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 1C-2012-40

12 **MICHELE KATHLEEN MORELAND**
13 McDonald Hearing Aid Center
14 106 North Sunrise Ave. Suite C-3
Roseville, CA 95661

A C C U S A T I O N

15 Hearing Aid Dispenser License No. HA 7507

16 Respondent.
17

18
19 Complainant alleges:

20 **PARTIES**

21 1. Paul Sanchez (Complainant) brings this Accusation solely in his official capacity as
22 the Executive Officer of the Speech-Language Pathology and Audiology and Hearing Aid
23 Dispensers Board, Department of Consumer Affairs.

24 2. On or about May 12, 2009, the Speech-Language Pathology and Audiology and
25 Hearing Aid Dispensers Board (Board) issued Hearing Aid Dispenser License Number HA 7507
26 to Michele Kathleen Moreland, (Respondent). The Hearing Aid Dispenser License was in full
27 force and effect at all times relevant to the charges brought herein and will expire on May 31,
28 2016, unless renewed.

JURISDICTION

3. This Accusation is brought before the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2531.02 of the Code states:

"Protection of the public shall be the highest priority for the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

5. Section 2533 of the Code states:

"The board may refuse to issue, or issue subject to terms and conditions, a license on the grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon the license of any licensee for any of the following:

"(a) Conviction of a crime substantially related to the qualifications, functions, and duties of a speech-language pathologist or audiologist or hearing aid dispenser, as the case may be. The record of the conviction shall be conclusive evidence thereof.

"..."

"(d) Advertising in violation of Section 17500. Advertising an academic degree that was not validly awarded or earned under the laws of this state or the applicable jurisdiction in which it was issued is deemed to constitute a violation of Section 17500.

"(e) Committing a dishonest or fraudulent act that is substantially related to the qualifications, functions, or duties of a licensee.

"(f) Incompetence, gross negligence, or repeated negligent acts.

"(g) Other acts that have endangered or are likely to endanger the health, welfare, and safety of the public.

"(h) Use by a hearing aid dispenser of the term 'doctor' or 'physician' or 'clinic' or 'audiologist,' or any derivation thereof, except as authorized by law.

1 "(i) The use, or causing the use, of any advertising or promotional literature in a manner
2 that has the capacity or tendency to mislead or deceive purchasers or prospective purchasers.

3 "(j) Any cause that would be grounds for denial of an application for a license.

4 "(k) Violation of Section 1689.6 or 1793.02 of the Civil Code."

5 "..."

6 6. Section 2538.35 of the Code states:

7 "A licensee shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser
8 a written receipt, signed by or on behalf of the licensee, containing all of the following:

9 "(a) The date of consummation of the sale.

10 "(b) Specifications as to the make, serial number, and model number of the hearing aid or
11 aids sold.

12 "(c) The address of the principal place of business of the licensee, and the address and
13 office hours at which the licensee shall be available for fitting or post fitting adjustments and
14 servicing of the hearing aid or aids sold.

15 "(d) A statement to the effect that the aid or aids delivered to the purchaser are used or
16 reconditioned, as the case may be, if that is the fact.

17 "(e) The number of the licensee's license and the name and license number of any other
18 hearing aid dispenser or temporary licensee who provided any recommendation or consultation
19 regarding the purchase of the hearing aid.

20 "(f) The terms of any guarantee or written warranty, required by Section 1793.02 of the
21 Civil Code, made to the purchaser with respect to the hearing aid or hearing aids."

22 7. Section 2538.36 of the Code states:

23 "(a) Whenever any of the following conditions are found to exist either from observations
24 by the licensee or on the basis of information furnished by the prospective hearing aid user, a
25 licensee shall, prior to fitting or selling a hearing aid to any individual, suggest to that individual
26 in writing that his or her best interests would be served if he or she would consult a licensed
27 physician specializing in diseases of the ear or if no such licensed physician is available in the
28 community then to a duly licensed physician:

1 "(1) Visible congenital or traumatic deformity of the ear.
2 "(2) History of, or active drainage from the ear within the previous 90 days.
3 "(3) History of sudden or rapidly progressive hearing loss within the previous 90 days.
4 "(4) Acute or chronic dizziness.
5 "(5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
6 "(6) Significant air-bone gap (when generally acceptable standards have been established).
7 "(7) Visible evidence of significant cerumen accumulation or a foreign body in the ear
8 canal.

9 "(8) Pain or discomfort in the ear.

10 "..."

11 8. California Code of Regulations, title 16, section 1399.115, states:

12 "(a) The bureau may refuse to approve or approve subject to terms and conditions a hearing
13 aid dispenser's authority to supervise a trainee-applicant, or may suspend, revoke or impose
14 probationary conditions on a hearing aid dispenser's authority to supervise a trainee-applicant for
15 any of the following causes:

16 "(1) The failure to comply with section 3357 of the code or any of the regulations contained
17 in this article which is a prima facie violation, or is confirmed by an internal investigation report
18 signed by the chief, or by a formal investigation by the Division of Investigation of the
19 department within the preceding 36 months. "Confirmed by formal investigation" means the
20 investigator assigned the matter has written a final investigation report which has been
21 countersigned by a Supervising Special Investigator.

22 "(2) The violation of any provision of the Hearing Aid Dispensers Licensing Law or the
23 regulations contained in this chapter which is confirmed by an internal investigation report signed
24 by the executive officer, or by a formal investigation by the Division of Investigation of the
25 department within the preceding 36 months. "Confirmed by formal investigation" means the
26 investigator assigned the matter has written a final investigation report which has been
27 countersigned by a Supervising Special Investigator.

28 ///

1 "(3) The dispenser's license has been revoked, suspended, or subject to any restrictions
2 within the preceding 36 months.

3 "(4) An Accusation has been filed against the dispenser under the Administrative Procedure
4 Act by the Attorney General's office and the charges are pending.

5 "..."

6 9. California Code of Regulations, title 16, section 1399.126, states:

7 "(a) For purposes of Section 3365.5 of the code, a significant air-bone gap is defined as a
8 difference of 15 decibels or more between the higher air conduction and the lower bone
9 conduction pure tone thresholds at 2 or more succeeding octave frequencies of 500 Hertz through
10 and including 4000 Hertz.

11 "(b) Tests for significant air-bone gap shall be performed in a suitable environment using
12 appropriate equipment to establish threshold values and with appropriate masking procedures
13 employed."¹

14 10. California Code of Regulations, title 16, section 1399.132

15 "For the purpose of denial, suspension, or revocation of a hearing aid dispenser's license
16 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
17 crime or act shall be considered substantially related to the qualifications, functions, and duties of
18 a hearing aid dispenser if to a substantial degree it evidences present or potential unfitness of a
19 hearing aid dispenser to perform the functions authorized by his license in a manner consistent
20 with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to
21 those involving the following:

22 "(a) Any violation of the provisions of Sections 650, 651, 651.3 and 655.2 of the code.

23 "(b) Any violation of the provisions of Chapter 7.5, Division 2 of the Business and
24 Professions Code."

25 ///

26 ///

27 _____
28 ¹ Section 3365.5 is now renumbered as section 2538.36.

1 11. Section 651 states:

2 "(a) It is unlawful for any person licensed under this division or under any initiative act
3 referred to in this division to disseminate or cause to be disseminated any form of public
4 communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image
5 for the purpose of or likely to induce, directly or indirectly, the rendering of professional services
6 or furnishing of products in connection with the professional practice or business for which he or
7 she is licensed. A 'public communication' as used in this section includes, but is not limited to,
8 communication by means of mail, television, radio, motion picture, newspaper, book, list or
9 directory of healing arts practitioners, internet, or other electronic communication.

10 "(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a
11 statement or claim that does any of the following:

12 "(1) Contains a misrepresentation of fact.

13 "(2) Is likely to mislead or deceive because of a failure to disclose material
14 facts.

15 "(3)(A) Is intended or is likely to create false or unjustified expectations of
16 favorable results, including the use of any photograph or other image that does not
17 accurately depict the results of the procedure being advertised or that has been altered
18 in any manner from the image of the actual subject depicted in the photograph or
19 image.

20 "(B) Use of any photograph or other image of a model without clearly stating in
21 a prominent location in easily readable type the fact that the photograph or image is
22 of a model is a violation of subdivision (a). For purposes of this paragraph, a model
23 is anyone other than an actual patient, who has undergone the procedure being
24 advertised, of the licensee who is advertising for his or her services.

25 "(C) Use of any photograph or other image of an actual patient that depicts or
26 purports to depict the results of any procedure, or presents 'before' and 'after' views
27 of a patient, without specifying in a prominent location in easily readable type size
28 what procedures were performed on that patient is a violation of subdivision (a).

1 Any 'before' and 'after' views (i) shall be comparable in presentation so that the
2 results are not distorted by favorable poses, lighting, or other features of presentation,
3 and (ii) shall contain a statement that the same 'before' and 'after' results may not
4 occur for all patients.

5 "(4) Relates to fees, other than a standard consultation fee or a range of fees for
6 specific types of services, without fully and specifically disclosing all variables and
7 other material factors.

8 "(5) Contains other representations or implications that in reasonable
9 probability will cause an ordinarily prudent person to misunderstand or be deceived.

10 "(6) Makes a claim either of professional superiority or of performing services
11 in a superior manner, unless that claim is relevant to the service being performed and
12 can be substantiated with objective scientific evidence.

13 "(7) Makes a scientific claim that cannot be substantiated by reliable, peer
14 reviewed, published scientific studies.

15 "(8) Includes any statement, endorsement, or testimonial that is likely to
16 mislead or deceive because of a failure to disclose material facts.

17 "(c) Any price advertisement shall be exact, without the use of phrases, including, but not
18 limited to, 'as low as,' 'and up,' 'lowest prices,' or words or phrases of similar import. Any
19 advertisement that refers to services, or costs for services, and that uses words of comparison
20 shall be based on verifiable data substantiating the comparison. Any person so advertising shall
21 be prepared to provide information sufficient to establish the accuracy of that comparison. Price
22 advertising shall not be fraudulent, deceitful, or misleading, including statements or
23 advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In
24 connection with price advertising, the price for each product or service shall be clearly
25 identifiable. The price advertised for products shall include charges for any related professional
26 services, including dispensing and fitting services, unless the advertisement specifically and
27 clearly indicates otherwise.

28 ///

1 "(d) Any person so licensed shall not compensate or give anything of value to a
2 representative of the press, radio, television, or other communication medium in anticipation of,
3 or in return for, professional publicity unless the fact of compensation is made known in that
4 publicity.

5 "(e) Any person so licensed may not use any professional card, professional announcement
6 card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or
7 a similar professional notice or device if it includes a statement or claim that is false, fraudulent,
8 misleading, or deceptive within the meaning of subdivision (b).

9 "(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona
10 fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

11 "(g) Any violation of this section by a person so licensed shall constitute good cause for
12 revocation or suspension of his or her license or other disciplinary action.

13 "..."

14 "(i) Each of the healing arts boards and examining committees within Division 2 shall adopt
15 appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with
16 Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

17 "Each of the healing arts boards and committees and examining committees within Division
18 2 shall, by regulation, define those efficacious services to be advertised by businesses or
19 professions under their jurisdiction for the purpose of determining whether advertisements are
20 false or misleading. Until a definition for that service has been issued, no advertisement for that
21 service shall be disseminated. However, if a definition of a service has not been issued by a
22 board or committee within 120 days of receipt of a request from a licensee, all those holding the
23 license may advertise the service. Those boards and committees shall adopt or modify
24 regulations defining what services may be advertised, the manner in which defined services may
25 be advertised, and restricting advertising that would promote the inappropriate or excessive use of
26 health services or commodities. A board or committee shall not, by regulation, unreasonably
27 prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or
28 commodities, by either outright prohibition or imposition of onerous disclosure requirements.

1 However, any member of a board or committee acting in good faith in the adoption or
2 enforcement of any regulation shall be deemed to be acting as an agent of the state.

3 "(j) The Attorney General shall commence legal proceedings in the appropriate forum to
4 enjoin advertisements disseminated or about to be disseminated in violation of this section and
5 seek other appropriate relief to enforce this section. Notwithstanding any other provision of law,
6 the costs of enforcing this section to the respective licensing boards or committees may be
7 awarded against any licensee found to be in violation of any provision of this section. This shall
8 not diminish the power of district attorneys, county counsels, or city attorneys pursuant to
9 existing law to seek appropriate relief.

10 12. Section 652 of the Code states, in pertinent part:

11 "Violation of this article [Article 6, commencing with Section 650 of the Code] in the case
12 of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation
13 of his or her license by the board by whom he or she is licensed, or if a license has been issued in
14 connection with a place of business, then for the suspension or revocation of the place of business
15 in connection with which the violation occurs. The proceedings for suspension or revocation
16 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
17 Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and each board
18 shall have all the powers granted therein."

19 13. Section 1793.02 of the Civil Code, also known as the Song-Beverly Consumer
20 Warranty Act, provides:

21 "(a) All new and used assistive devices sold at retail in this state shall be accompanied by
22 the retail seller's written warranty which shall contain the following language: "This assistive
23 device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is
24 not specifically fit for your particular needs, it may be returned to the seller within 30 days of the
25 date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you
26 return the device, the seller will either adjust or replace the device or promptly refund the total
27 amount paid. This warranty does not affect the protections and remedies you have under other
28 laws." In lieu of the words "30 days" the retail seller may specify any longer period.

1 "(b) The language prescribed in subdivision (a) shall appear on the first page of the
2 warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of
3 the sale of the device.

4 "(c) If the buyer returns the device within the period specified in the written warranty, the
5 seller shall, without charge and within a reasonable time, adjust the device or, if appropriate,
6 replace it with a device that is specifically fit for the particular needs of the buyer. If the seller
7 does not adjust or replace the device so that it is specifically fit for the particular needs of the
8 buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be
9 deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive
10 device or other consideration exchanged as part of the transaction and shall promptly cancel or
11 cause to be canceled all contracts, instruments, and security agreements executed by the buyer in
12 connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other
13 fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

14 ". . . ."2

15 **COST RECOVERY**

16 14. Section 125.3 of the Code states, in pertinent part, that the Board may request the
17 administrative law judge to direct a licensee found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 15. Paragraph 11 above, referring to the costs provision of section 651, subsection (j), is
21 re-alleged and incorporated herein by reference.

22 **FACTS**

23 **Consumer M.S.**

24 16. Respondent, Hearing Aid Dispenser Michele Moreland, is employed by McDonald
25 Hearing Aid Center, (MHAC), a corporation with several branch locations throughout Northern
26 California. Respondent has worked at several of the branch locations, including the Fair Oaks,

27 ² The text of Civil Code section 1793.02 cited here is the version that was in force at the
28 time of the events alleged in this Accusation.

1 Sacramento, and Roseville branch locations. MHAC disseminates advertisements through
2 mailers and newspapers each month. On or about February 10, 2012, M.S., an 81 year old
3 woman, responded to an advertisement by MHAC, advertising a limited time 10-day sale, of 50-
4 67% off prices, with a free video ear inspection and audiometric testing, and a \$745.00 entry level
5 hearing aid, with a six-week guarantee, "no risk," and "nothing to lose." On or about February
6 10, 2012, M.S. entered the Fair Oaks MHAC branch location at 5480 Dewey Drive, Suite 110, in
7 Fair Oaks, California.

8 17. On or about February 10, 2012, M.S. was given an audiometric hearing test by
9 Respondent. Respondent then introduced M.S. to Ashley Brown, whose hearing aid dispenser
10 trainee license had expired on or about November 30, 2011. Brown told M.S. that she had a
11 "50% hearing loss" and advised her to purchase a pair of hearing aids for \$4,990.00. M.S. asked
12 Brown about the \$745.00 hearing aid advertised, and Brown told her that the entry level hearing
13 aid was not suitable for her needs. M.S. told Brown that she would like to have a second opinion.
14 Brown told her that it was unnecessary as MHAC had been in business for 60 years. Brown
15 proceeded to make molds of M.S.'s ears, and brought her back to Respondent to go over the
16 details of the purchase.

17 18. On or about February 10, 2012, Respondent endorsed Brown's recommendation of
18 hearing aids selected for M.S. Respondent then went over the terms of the sale of hearing aids
19 with M.S. M.S. entered into a purchase agreement with Respondent for a pair of Intel-a Hear
20 model hearing aids for a total cost of \$4,990.00. The purchase agreement indicated that the
21 hearing aid package M.S. purchased was \$9,980.00 and that M.S. was being given a 50%
22 discount in order to arrive at the price of \$4,990.00. M.S. paid the full amount with her Discover
23 credit card. As soon as M.S. returned home, she was concerned that she overspent on hearing
24 aids, when she only intended to purchase the \$745.00 hearing aid package given that she was on a
25 fixed income and care-giver to her elderly World War II veteran husband. She contacted her
26 credit card company and requested to stop payment, but was told it was too late. On or about
27 February 13, 2012, M.S. contacted MHAC to ask about rescinding her purchase, and was told she
28 could not.

1 19. On or about March 2, 2012, M.S. returned to MHAC and told Respondent that she
2 did not want to continue with the hearing aid purchase. Respondent told her that she would be
3 able to return the devices for a refund if the hearing aids did not work for her. M.S. relied on
4 Respondent's statements, and accepted delivery of the hearing aids on March 2, 2012. On or
5 about March 12, 2012, M.S. had another appointment with MHAC, during which she told
6 Respondent that the hearing aids were not working, and she was seeking a second opinion.
7 Between March 12, and May 2, 2012, M.S. persisted in seeking a refund from MHAC, returning
8 multiple times to MHAC and speaking with Respondent. On or about April 2, 2012, M.S.
9 received a letter from MHAC informing her that her request for a refund was denied, and that she
10 must complete the patient journey.

11 20. On or about May 2, 2012, M.S. received a written evaluation from her physician
12 stating that she had a mild to moderately severe sensorineural hearing loss consistent with
13 presbycusis. The physician opined that for M.S.'s condition and her degree of hearing loss,
14 hearing aids are optional. M.S. provided this document to MHAC. On or about May 30, 2012,
15 MHAC refunded the purchase on the Discover credit card.

16 **Consumer A.A.**

17 21. On or about November 13, 2012, A.A., an elderly man in his 80's, responded to an
18 advertisement by MHAC for a limited time five-day-only special with up to 67% off prices, a free
19 video ear inspection, and a \$745.00 entry level hearing aid, with "satisfaction guaranteed" and a
20 six-week no risk, nothing to lose guarantee. The advertisement showed a picture of Stan
21 Atkinson holding a hearing aid, with the words "Stan Atkinson, Intela-Hear Wearer" next to his
22 picture. There was no disclaimer indicating that Stan Atkinson was a paid spokesman for the
23 product or for MHAC.

24 22. On or about November 13, 2012, A.A. entered the MHAC branch office at 2344
25 Butano Drive, in Sacramento, California. A.A. was seen by Respondent, and another Hearing
26 Aid Dispenser (HAD), Karen Roark. Respondent conducted audiometric testing on A.A. The
27 results of the hearing test show that a bone conduction test was performed on A.A.'s left ear, but
28 no bone conduction test was performed on A.A.'s right ear. Following the hearing testing, Roark

1 told A.A. that the \$745 hearing aids advertised would not meet his needs for hearing assistance,
2 and that he required a more expensive set of hearing aids, costing \$4,045.00 each, with the special
3 limited time sale. Roark assured A.A. that the more expensive hearing aids would increase his
4 hearing by 90%, and that it was a risk-free guarantee, and that he could receive his money back if
5 he was not satisfied with the hearing aids.

6 23. On or about November 13, 2012, Respondent endorsed Roark's recommendation of
7 hearing aid product selection for A.A., and went over the terms of the sale of hearing aids with
8 A.A. On or about November 13, 2012, A.A. entered into a purchase agreement with Respondent
9 for the purchase of a pair of "Intela-Hear" brand hearing aids, model Nexus XD, at a price of
10 \$4,045.00 each for a total of \$8,200.00. The purchase agreement indicates that normal price of
11 these hearing aids would have been \$17,980.00 for the pair. At the time of sale, A.A. paid half
12 the price, writing a check to MHAC for \$4,045.00. A.A. reported that he felt rushed through the
13 purchase, and did not fully understand the details on the purchase agreement until he reviewed the
14 document at his home that evening. He was concerned about having made such a large purchase,
15 but decided that if the hearing aids were able to restore 90% of his hearing, it would be worth the
16 cost.

17 24. On or about November 29, 2012, A.A. returned to the Butano Branch location of
18 MHAC and met with Respondent to accept delivery of the hearing aids. A.A. found the hearing
19 aids to be uncomfortable the first time he put them on, with the left hearing aid causing him pain
20 due to his arthritis, which extends into his head.

21 25. On or about December 13, 2012, A.A. returned to the Butano Branch location again
22 and met with Respondent, explaining that he wanted to return the hearing aids. He indicated that
23 he had spoken with an audiologist who informed him MHAC had misrepresented the degree of
24 hearing improvement he could achieve with hearing aids. He also informed Respondent that the
25 audiologist informed him that a 90% increase in hearing for his condition was impossible with
26 any known technology. Respondent refused to cancel the purchase agreement and informed A.A.
27 that he was required to complete the MHAC "Patient Journey" before he could be eligible for a
28 refund. On or about December 18, 2012, A.A. again met with Respondent and attempted to

1 return his hearing aids for a refund. Once again Respondent informed him he was required to
2 complete the Patient Journey before he would be eligible for a refund. A.A. became angry
3 because he felt he had been misled with the "Satisfaction Guarantee, No Risk Refund"
4 advertisement. A.A. left his hearing aids at the MHAC branch location.

5 26. On or about December 18, 2012, A.A. contacted the Board to report the problem he
6 was having with MHAC. Investigators with the Department of Consumer Affairs received a
7 summary of his interactions with MHAC from A.A., and agreed to accompany him on his next
8 meeting with MHAC. In the interim, A.A. sent letters to MHAC, explaining that the hearing aids
9 were not fit for his needs because they hurt his ears, and that he requested a prompt refund. On or
10 about December 19, 2012, an Undercover Investigator accompanied A.A. to the Butano Branch
11 location assuming the role of A.A.'s granddaughter. When they arrived, a receptionist told them
12 that they must see Respondent, because she was responsible for A.A.'s fitting process and she is
13 only in the Butano Branch location on Tuesdays and Thursdays. The Investigator and A.A.
14 returned to the Butano Branch location the next day, Tuesday December 20, 2012, and met with
15 Respondent. The Investigator told Respondent that A.A. was unhappy with the hearing aids,
16 because they hurt his ears due to his arthritis, and he wanted to return the hearing aids and obtain
17 a refund. Respondent explained that A.A. cannot qualify for a refund under state law until he has
18 provided an opportunity for seller to adjust and fit the hearing aids, and that under the terms of the
19 purchase agreement A.A. entered into, the fitting must be completed through MHAC's Patient
20 Journey which requires five separate appointments and approximately four to six weeks to
21 complete. She further reminded A.A. that he owed the second payment \$4,045.00 for the
22 purchase of the hearing aids.

23 27. When the Investigator asked why A.A. was not eligible for a refund, Respondent
24 stated that A.A. had made a statement complaining that the sales process was misleading and
25 complained the hearing aids were overpriced. Respondent claimed that under California law a
26 consumer is not entitled to a refund of hearing aids due to buyer's remorse over the cost. A.A.
27 denied that he was dissatisfied with the cost, and clarified that he felt the hearing aids were not of
28 the quality promised for the price, and that the hearing aids were hurting his ear. Respondent

1 acknowledged A.A. had complained of pain, but stated that even if the hearing aids are not fit or
2 do not work, the consumer must still give the seller the ability to adjust and fit the hearing aids.

3 28. During the December 20, 2012 visit with the Investigator, A.A. requested Respondent
4 alter the fit of the hearing aids because the aids were causing pain to his left ear. Respondent took
5 the hearing aids to another room and returned, reporting that she had adjusted the shell casing to
6 minimize the material putting pressure on the canal walls of A.A.'s ears. A.A. placed the hearing
7 aids in his ears, and made another appointment for a fitting on January 8, 2013. On the drive
8 home from MHAC, A.A. complained to the Investigator that the hearing aids were still hurting
9 his ears.

10 29. On or about January 4, 2013, and January 8, 2013, the Investigator and A.A. returned
11 to the Butano Branch location and sought a refund, complaining that the hearing aids still hurt
12 A.A.'s ear. A.A. filled out a request for refund. On or about January 17, 2013, HAD Melissa
13 Peacock sent a letter to A.A. informing him that he was not entitled to a refund because he kept
14 the hearing aids for longer than 30 days after delivery without seeking an adjustment, he did not
15 allow the dispenser to perform an adjustment, and because complaints about price are not a valid
16 ground for a refund.

17 30. In reviewing consumer A.A.'s complaint against MHAC, the Board obtained a report
18 from an independent expert who opined that for a person with A.A.'s hearing loss there would be
19 very little difference in power between the \$745.00 hearing aid and the \$4,045 hearing aid
20 Respondent sold to A.A.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Fraudulent or Dishonest Act)**

23 31. Paragraphs 16-20 above are incorporated by reference as if fully set forth herein.

24 32. Respondent is subject to disciplinary action under section 2533, subdivision (e),
25 which incorporates section 651, committing a fraudulent or dishonest act, in that she committed
26 fraudulent or dishonest acts in connection with the sale of a hearing aid to M.S., which include,
27 but are not limited to the following:
28

1 (a) entering into a purchase agreement with M.S. with the knowledge that MHAC had
2 disseminated false and misleading statements in connection with the sale;

3 (b) falsely telling M.S. that she could return the devices for a refund if the hearing aids did
4 not work for her while omitting the 15% cancelation fee and the onerous programs she would
5 have to complete before being considered for a refund;

6 (c) misrepresenting that the hearing aid was on a limited time, sale price; and

7 (d) recommending and selling the \$4,990.00 Intela-Hear hearing aids to M.S. without
8 offering the alternative of the \$745.00 hearing aid that was advertised by MHAC and appropriate
9 for M.S.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Violation of the Song-Beverly Act)**

12 33. Paragraphs 16-20 above are incorporated by reference as if fully set forth herein.

13 34. Respondent is further subject to disciplinary action under section 1793.02 (the Song-
14 Beverly Act), by entering into a purchase agreement that imposed a 15% cancelation fee, and by
15 failing to promptly return and refund the total amount paid for hearing aids that were not fit for
16 M.S.'s needs.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Gross Negligence)**

19 35. Paragraphs 21-30 above are re-alleged and incorporated by reference herein.

20 36. Respondent is subject to disciplinary action under section 2533, subdivision (f), gross
21 negligence, in that she failed to perform or chart a bone conduction test of A.A.'s right ear, as
22 necessary to determine whether a physician referral was necessary due to an air-bone gap.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Fraudulent or Dishonest Act)**

25 37. Paragraphs 21-30 above are incorporated by reference as if fully set forth herein.

26 38. Respondent is subject to disciplinary action under section 2533, subdivision (e),
27 which incorporates section 651, committing a fraudulent or dishonest act, in that she committed
28

1 fraudulent or dishonest acts in connection with the sale of hearing aids to A.A., which include,
2 but are not limited to the following:

3 (a) entering into a purchase agreement with A.A. with the knowledge that MHAC had
4 disseminated false and misleading statements in connection with the sale;

5 (b) falsely telling A.A. that he could return the devices for a refund if the hearing aids did
6 not work for her while omitting the 15% cancelation fee and the onerous programs she would
7 have to complete before being considered for a refund;

8 (c) misrepresenting that the hearing aid was on a limited time, sale price;

9 (d) recommending and selling the of \$8,200.00 Intela-Hear hearing aids to A.A. without
10 offering the alternative of the \$745.00 hearing aid that was advertised by MHAC and appropriate
11 for A.A.; and

12 (e) falsely claiming that A.A. had not allowed her to make adjustments to the hearing aids
13 within the timeframe for adjustments authorized by the Song-Beverly Act or the purchase
14 agreement.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Violation of the Song-Beverly Act)**

17 39. Paragraphs 21-30 above are incorporated by reference as if fully set forth herein.

18 40. Respondent is further subject to disciplinary action under section 1793.02 (the Song-
19 Beverly Act), by entering into a purchase agreement that imposed a 15% cancelation fee, and by
20 failing to promptly return and refund the total amount paid for hearing aids that were not fit for
21 A.A.'s needs.

22 ///

23 ///

24 ///

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Speech-Language Pathology and Audiology and Hearing Aid
4 Dispensers Board issue a decision:

5 1. Revoking or suspending Hearing Aid Dispenser License Number HA 7507, issued to
6 Respondent Michele Kathleen Moreland;

7 2. Revoking Respondent Michele Moreland's ability to supervise trainee and temporary
8 licensees;

9 3. Ordering Respondent Michele Moreland, to pay the Speech-Language Pathology and
10 Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and
11 enforcement of this case, pursuant to Business and Professions Code section 125.3; and

12 4. Taking such other and further action as deemed necessary and proper.
13
14

15
16 DATED: December 4, 2015



17 PAUL SANCHEZ
18 Executive Officer
19 Speech-Language Pathology and Audiology and Hearing
20 Aid Dispensers Board
21 Department of Consumer Affairs
22 State of California
23 Complainant

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